

AMENDED IN SENATE MAY 23, 2008

AMENDED IN SENATE APRIL 8, 2008

## SENATE BILL

**No. 1718**

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### Introduced by Senator Perata

February 22, 2008

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An act to add Section 19827.4 to the Government Code, relating to public employment.

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1718, as amended, Perata. Public employment: State Bargaining Unit 2: compensation.

The Ralph C. Dills Act permits state employees to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations, as specified. Existing law permits an employee organization to become the exclusive representative of an appropriate unit for purposes of meeting and negotiating, as specified. Existing law requires the Governor, or his or her representative, as properly designated by law, to meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of recognized employee organizations, and to consider fully any presentation that is made by an employee organization on behalf of its members prior to arriving at a determination of policy or course of action.

~~This bill would require that salaries of legal professionals in State Bargaining Unit 2, California Attorneys, Administrative Law Judges, and Hearing Officers in State Employment, be determined by a specified calculation that would be based on the salaries of other public sector legal professionals. The bill would also require the state and the~~

~~exclusive representative to jointly survey and calculate the salaries for the specified legal professionals no later than March 15 of each year. The bill would require any increase in salary resulting from these provisions to be implemented through a memorandum of understanding. However, the failure of the parties to reach agreement for a memorandum of understanding would not relieve the state of the duty to compensate those legal professionals in accordance with the specified formula. The bill would permit the salary of those legal professionals to deviate from the amount derived from the survey results by mutual agreement between the exclusive representative and the state pursuant to the collective bargaining process. The bill would also provide that if these provisions are in conflict with the provisions of a memorandum of understanding reached, as specified, the memorandum of understanding is controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions would not become effective unless approved by the Legislature in the annual Budget Act. The~~

*Existing law requires the Department of Personnel Administration to establish and adjust salary ranges for each class of position in the state civil service, subject to specified merit limits. Existing law requires the salary range to be based on the principle that like salaries shall be paid for comparable duties and responsibilities. In establishing or changing these ranges, existing law requires consideration to be given to the prevailing rates for comparable service in other public employment and in private business. Existing law also requires the department, at least 6 months before the end of the term of an existing memorandum of understanding or immediately upon the reopening of negotiations under an existing memorandum of understanding, to submit to the parties meeting and conferring and to the Legislature, a report containing the department's findings relating to the salaries of employees in comparable occupations in private industry and other governmental agencies.*

*This bill would require the Department of Personnel Administration to annually conduct a survey that would obtain specified information regarding the compensation of certain legal professionals, including attorneys employed by specified public entities and judges. The bill would require the department to issue an annual report that would include the data obtained from the surveys as well as specified analyses. The bill would also require the report to be provided to the Legislature, the Governor, and the exclusive representative of State Bargaining Unit*

2, no later than March 15 of each year. The bill would specify that this report would satisfy the department's reporting requirement to the parties meeting and conferring and to the Legislature. The bill would specify that the department would absorb the cost of preparing the surveys required by these provisions from existing appropriations. The bill would make related legislative findings and declarations regarding State Bargaining Unit 2.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 19827.4 is added to the Government  
2 Code, to read:  
3 19827.4. (a) The Legislature finds and declares the following:  
4 (1) The state's attorneys, administrative law judges, hearing  
5 officers, and commissioners litigate in, and preside over, a vast  
6 array of criminal and civil cases and issues with substantial public  
7 safety, economic, social, and cultural impact on the people of  
8 California. The state's ability to ensure public safety, protect its  
9 fiscal resources, and defend its laws requires that it attract and  
10 retain highly-skilled and competent legal professionals.  
11 (2) State law, the Ralph C. Dills Act, mandates collective  
12 bargaining for state public employees in order to secure fair and  
13 reasonable compensation and benefits. The state has divided its  
14 employees into 21 bargaining units, combining all of its legal  
15 ~~professionals-attorneys~~ professionals (attorneys, administrative  
16 law judges, hearing officers, and ~~commissioners-into~~  
17 ~~commissioners~~) into Bargaining Unit 2.  
18 (3) The California Supreme Court has found that for collective  
19 bargaining to achieve fair and reasonable compensation and  
20 benefits, state employees must be able to use all of the traditional  
21 tools available to labor, including the ability to present a credible  
22 threat of a strike or job action.  
23 (4) The state's legal professionals are officers of the court and  
24 have a unique legal and ethical duty to ensure the fair  
25 administration of justice and to put the state's interests ahead of  
26 their own.  
27 (5) Existing law and the California Rules of Professional  
28 Conduct prohibit an attorney from delaying a client's case or cause

1 or intentionally harming a client's case or cause in a dispute over  
2 compensation.

3 (6) Unlike other state employees subject to collective bargaining  
4 under the Ralph C. Dills Act, these legal and ethical obligations  
5 prevent legal professionals employed by the state from striking  
6 for better pay or otherwise engaging in any meaningful collective  
7 bargaining.

8 ~~(7) As a result of the failure of the state's collective bargaining~~  
9 ~~system with respect to the state's legal professionals, the salaries~~  
10 ~~paid to the state's professional legal staff are as much as 50 percent~~  
11 ~~less than those paid by local public agencies for the same skills~~  
12 ~~and are far below the salaries paid by private law firms with whom~~  
13 ~~the state competes for legal talent. Grossly underpaying the state's~~  
14 ~~legal professionals places the state, its treasury, its citizens, and~~  
15 ~~its taxpayers at an extreme disadvantage, and inhibits the ability~~  
16 ~~of the state to effectively protect public safety, defend public~~  
17 ~~resources, and ensure the fair administration of justice.~~

18 ~~(8) For these reasons, it is necessary to revise the state's~~  
19 ~~collective bargaining system to put in place a system that will~~  
20 ~~ensure that, at a minimum, California's legal professionals are~~  
21 ~~compensated in a manner comparable to that of skilled legal~~  
22 ~~professionals for whom other California public sector employers~~  
23 ~~compete in the labor market.~~

24 ~~(b) To effectuate the intent of subdivision (a), the salaries for~~  
25 ~~attorneys in Bargaining Unit 2 shall be the average of the salaries~~  
26 ~~of attorneys with the same level of experience employed by the~~  
27 ~~following 20 public agencies in California:~~

28 ~~(1) The office of the district attorney in the eight most populous~~  
29 ~~counties.~~

30 ~~(2) The office of the city attorney in the eight most populous~~  
31 ~~cities.~~

32 ~~(3) The following statewide public agency employers of~~  
33 ~~attorneys:~~

34 ~~(A) The Habeas Corpus Resource Center.~~

35 ~~(B) The California State University.~~

36 ~~(C) The University of California.~~

37 ~~(D) The Administrative Office of the Courts.~~

38 ~~(e) To effectuate the intent of subdivision (a), the salaries for~~  
39 ~~administrative law judges, hearing officers, and commissioners in~~  
40 ~~Bargaining Unit 2 shall be the average of the salaries of judges~~

1 with the same level of experience employed as federal  
2 administrative law judges in California and as State Bar Court  
3 judges.

4 (d) The state and the exclusive representative shall jointly survey  
5 and calculate the salaries for the above entities and classifications  
6 no later than March 15 of each year.

7 (e) Any increase in salary resulting from this section shall be  
8 implemented through a memorandum of understanding negotiated  
9 pursuant to the Ralph C. Dills Act (Chapter 10.3 (commencing  
10 with Section 3512) of Division 4 of Title 1). Notwithstanding the  
11 foregoing, the failure of the parties to reach agreement for a  
12 memorandum of understanding pursuant to the Ralph C. Dills Act  
13 shall not relieve the state of the duty to compensate members of  
14 Bargaining Unit 2 in accordance with the formula set forth in this  
15 section.

16 (f) The salary for members of Bargaining Unit 2 may deviate  
17 from the amount derived from the survey results by mutual  
18 agreement between the exclusive representative and the state  
19 pursuant to the collective bargaining process.

20 (g) If the provisions of this subdivision are in conflict with the  
21 provisions of a memorandum of understanding reached pursuant  
22 to Section 3517.5, the memorandum of understanding shall be  
23 controlling without further legislative action, except that if the  
24 provisions of a memorandum of understanding require the  
25 expenditure of funds, the provisions shall not become effective  
26 unless approved by the Legislature in the annual Budget Act.

27 (7) *Ensuring that the state's legal professionals are compensated*  
28 *at competitive rates compared to other relevant public sector*  
29 *entities enables the state to effectively protect public safety, defend*  
30 *public resources, and ensure the fair administration of justice.*

31 (8) *For these reasons, it is critically important to conduct a*  
32 *methodologically sound survey of the compensation of other*  
33 *comparable public sector legal professionals, in order to provide*  
34 *the state with an accurate assessment of the relevant labor market.*

35 (b) *To effectuate the intent of subdivision (a), with respect to*  
36 *the state's attorneys, the Department of Personnel Administration*  
37 *shall annually conduct a survey of the following public entities:*

38 (1) *The Sacramento County District Attorney's Office.*

39 (2) *The Sacramento City Attorney's Office.*

40 (3) *The San Francisco District Attorney's Office.*

- 1 (4) *The Alameda County District Attorney's Office.*
- 2 (5) *The Oakland City Attorney's Office.*
- 3 (6) *The Los Angeles County District Attorney's Office.*
- 4 (7) *The Los Angeles City Attorney's Office.*
- 5 (8) *The San Diego County District Attorney's Office.*
- 6 (9) *The San Diego City Attorney's Office.*
- 7 (10) *The Fresno District Attorney's Office.*
- 8 (11) *The Fresno City Attorney's Office.*
- 9 (12) *The Habeas Corpus Resource Center.*

10 (c) *To effectuate the intent of subdivision (a), with respect to*  
11 *the state's administrative law judges, hearing officers, and*  
12 *commissioners, the Department of Personnel Administration shall*  
13 *annually conduct a survey of the compensation of federal*  
14 *administrative law judges in California and judges on the*  
15 *California State Bar Court.*

16 (d) *The surveys conducted pursuant to subdivisions (b) and (c)*  
17 *shall be considered to fulfill the reporting requirements of Section*  
18 *19826 and shall gather, at a minimum, the following data:*

19 (1) *The entire pay scale, including all steps and ranges, for the*  
20 *attorneys employed by the entities in subdivision (b) and the judges*  
21 *described in subdivision (c), from entry level to the highest*  
22 *nonmanagerial judge or attorney position.*

23 (2) *All duty statements, minimum qualifications, time-in-grade*  
24 *requirements, and promotional standards for all positions*  
25 *described in paragraph (1).*

26 (3) *All compensation in addition to the base salary paid by the*  
27 *employer to the positions listed in paragraph (1), including, but*  
28 *not limited to, contributions to pensions, 401k, 457, or other*  
29 *retirement plans, health care insurance contributions, and any*  
30 *other allowances, premiums, or differentials available to the*  
31 *positions described in paragraph (1).*

32 (4) *Complete and accurate descriptions of all benefits available*  
33 *to the positions described in paragraph (1), including, but not*  
34 *limited to, retirement plans, health care plans, and vacation, leave,*  
35 *and holiday plans.*

36 (e) *The Department of Personnel Administration shall issue an*  
37 *annual report, including all of the data described in subdivision*  
38 *(d), as well as the following analyses:*

39 (1) *The average salary paid to all attorneys or judges employed*  
40 *in each surveyed entity, reported by the entity.*

1     (2) *The average of the salaries actually paid to incoming,*  
2 *entry-level attorneys or judges employed by the surveyed entities,*  
3 *reported by the entity.*

4     (3) *The average of the salaries paid to the highest paid*  
5 *nonmanagerial attorneys or judges employed by all of the surveyed*  
6 *entities.*

7     (4) *The number of attorneys or judges at each salary level within*  
8 *each entity.*

9     (5) *The average years of postbar legal experience of attorneys*  
10 *or judges at each salary level within each entity.*

11     (f) *The report described in subdivision (e) shall be provided to*  
12 *the Legislature, the Governor, and the exclusive representative of*  
13 *State Bargaining Unit 2, no later than March 15 of each year. The*  
14 *report shall be accompanied by a declaration from the Director*  
15 *of the Department of Personnel Administration certifying that the*  
16 *report is true and accurate to the best of his or her knowledge.*

17     (g) *The Department of Personnel Administration shall absorb*  
18 *the cost of preparing the surveys required by this section from*  
19 *existing appropriations.*